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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 1029

DUNNE LEASES CARS AND TRUCKS, INC.,
Appellant.

v.

LAURE B. LUSSIER, in his capacity as
REGISTRAR OF MOTOR VEHICLES for the
STATE OF RHODE ISLAND,
Appellee.

JURISDICTIONAL STATEMENT

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INDEX

	Page
Opinions Below	2
Jurisdiction	2
Statute Involved	4
Questions Presented	5
Statement	5
The Facts	5
The Federal Questions Here Presented Are Substantial	6
Conclusion	15
Appendix A—Opinion of Superior Court of Rhode Island	16
Appendix B—Opinion of Supreme Court of Rhode Island	21
Appendix C—Order of Superior Court Denying and Dismissing Petition and Appeal of Petitioner	31
Appendix D—Docket Entry Affirming Order Set Forth in Appendix C After Remand From Supreme Court of Rhode Island	32
Appendix E—Provisions of §31-6-1(E) Here In Issue	33

Table of Cases

Adams v. *City of Park Ridge*, 293 F(2d) 585 (1961)	8, 14
Andberg v. *City of Lincoln* (Neb.), 2 NW(2d) 613 (1942)	8
Baldwin Construction Co. v. *Essex County Board of Taxation* (N.J.), 108 A(2d) 598 (1954)	8
Barbier v. *Connolly*, 113 U.S. 27 at 31 (1885)	7
Broadway Auto Sales v. *Asselin* (R.I.) 176 A(2d) 714 (1961)	5
City of Ravenna v. *Sistrunk & Co.* (Ky.), 80 SW(2d) 578 (1935)	9
City of Seattle v. *Rogers* (Wash) 106 P(2d) 598 (1940)	14
Crafts v. *Roy* (1900) 22 R.I. 179	10

Page

In Re Dorrance Street (1856) 4 R.I. 230 10
Fowler v. *Rhode Island*, 345 U.S. 67 (1953) 4
Fronton, Inc. v. *Florida State Racing Commission* (Fla.), 82 S.(2d) 520 (1955) 9
Idaho Savings & Loan Association v. *Roden* (Idaho) 350 P(2d) 225 (1960) 8
Liggett Co. v. *Lee*, 288 U.S. 517 (1933) 7, 8
McGowan v. *Maryland*, 366 U.S. 420 (1961) 14
Morey v. *Doud*, 354 U.S. 457 (1957) 7, 14
In Re Regulation F-22 (N.J.) 152 A(2d) 848 (1959) .. 9, 13
Royster Guano Co. v. *Virginia*, 253 U.S. 412 (1920) ... 8
Sarner v. *Township of Union* (N.J.), 151 A(2d) 208 (1959) 9
Sepe v. *Daneker* (1949) 76 R.I. 160 10
Smith v. *California*, 361 U.S. 147 (1959) 4

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Appellee.

JURISDICTIONAL STATEMENT

Appellant appeals from the final Order of the Superior Court of the State of Rhode Island originally entered on December 20, 1962. In accordance with Rhode Island practice, that Order was affirmed by the Supreme Court of the State of Rhode Island upon appeal to that Court, and the cause was remanded to the Superior Court for further proceeding, which consisted of a Docket Entry on January 16, 1964 in the Superior Court affirming said Order pursuant to the opinion of the Supreme Court of the State of Rhode Island. Appellant submits this Statement to show that the Supreme Court of the United States has jurisdic-

tion of this Appeal and that substantial Federal constitutional questions are presented.

Opinions Below

The opinion of Justice Patrick P. Curran of the Superior Court of the State of Rhode Island is not reported. A copy of that opinion is annexed hereto as Appendix A. The opinion of the Supreme Court of the State of Rhode Island is reported at 196 Atl. 2d 728 (1964). A copy of that opinion is annexed hereto as Appendix B.

Jurisdiction

Appellant, a Rhode Island corporation, engaged in the business of renting motor vehicles, is required to and does in the course of its business register its motor vehicles with Appellee who at the time that this action commenced was Registrar of Motor Vehicles for the State of Rhode Island. Appellant applied for and demanded registration of its motor vehicles tendering the registration fees according to the usual practice for all other registrants. Appellee however has refused and continues to refuse Appellant's application for registration unless Appellant pays double registration fees pursuant to the provisions of § 31-6-1(E) of the General Laws of Rhode Island (1956 Edition).

In April 1962 Appellant filed its petition to the Superior Court pursuant to the provisions of § 31-2-19 of the General Laws of Rhode Island (1956 Edition). In that petition Appellant prayed for an Order as follows:

> A. That the Court find that the provisions of § 31-6-1(E) of said General Laws of the State of Rhode Island (1956 Edition) are void, illegal and unconstitutional as violative and contrary to Article Fourteen

of the Amendments to the Constitution of the United States and in particular to that portion of said Article which prohibits any State from making or enforcing any law which denies to any person within its jurisdiction the equal protection of the laws;

B. That the Court restrain the Appellee from enforcing said statutory provisions and from demanding payment of double registration fees from Appellant as a condition for the registration of the motor vehicles of Appellant;

C. That the Court order the Appellee to make refund of monies unlawfully collected from Appellant pursuant to said provisions, which payments have been made under protest by Appellant.

After a hearing in the Superior Court of Rhode Island before Justice Patrick P. Curran and the rendition by said Justice of his opinion (Appendix A) an order was entered on December 20, 1962 in said Superior Court. A copy of said order is annexed hereto as Exhibit C. Said Order refused relief to the Appellant and denied and dismissed its petition.

The Appellant appealed that Order to the Supreme Court of Rhode Island. The Supreme Court of Rhode Island in its opinion on said appeal (which appeal was heard together with four other appeals by other companies in Rhode Island who are similarly affected by said Statute and the enforcement thereof by Appellee) denied and dismissed Appellant's appeal and remanded the cause to the Superior Court for further proceedings for the purpose of affirming the Order appealed from. On January 16, 1964 a docket entry was entered by the Clerk of said Superior Court affirming said Order denying and dismiss-

ing Appellant's petition. A copy of said Docket Entry is annexed hereto as Appendix D.

The notice of appeal to the Supreme Court of the United States from such Order was filed in the Superior Court of Rhode Island on February 28, 1964.

The statutory provision conferring on the Supreme Court of the United States jurisdiction of this appeal is Title 28, United States Code, Sec. 1257(2).

The following decisions sustain the jurisdiction of this Court to review said order on this appeal. *Smith* v. *California*, 361 U. S. 147 (1959); *Fowler* v. *Rhode Island*, 345 U. S. 67 (1953).

Statute Involved

The statute here involved is § 31-6-1(E) of the General Laws of Rhode Island (1956 Edition). Title 31 of said General Laws in general relates to Motor and other Vehicles. Chapter 6 of that Title sets forth the various registration fees for registering motor vehicles in the State of Rhode Island, which fees are generally related to the weight of the vehicle where the vehicle is an automobile or a truck or tractor. The fees for these vehicles are set forth in § 1 of said Chapter 6. Sub-section (E) of § 1 is the statute here in issue and reads as follows:

> "For the registration of every motor vehicle for hire, double the above rates. Except that any citizen of the town of New Shoreham shall not be required to pay the double rate specifically provided for in this section; provided, however, that the motor vehicle so used by such citizen of New Shoreham shall be properly registered in accordance with chapters 3 to 9, inclusive, of this title." (a copy of said statutory provisions is also annexed hereto as Appendix E).

In previous litigation in Rhode Island, the Supreme Court of Rhode Island held that Appellant's motor vehicles were "motor vehicles for hire" within the purview of said § 1(E). *Broadway Auto Sales* v. *Asselin* (R.I.) 176A(2d) 714 (1961).

Question Presented

Are the provisions of § 31-6-1(E) repugnant to or in violation of Article XIV of the Amendments to the Constitition of the United States and in particular to that portion of said Article which prohibits any state from making or enforcing any law which denies to any person within its jurisdiction the equal protection of the laws?

Statement

The Federal constitution question here sought to be reviewed was raised in the petition filed by Appellant in the Superior Court of Rhode Island as more particularly set forth hereinabove at pp. 2-3. This issue or question was tried in the Superior Court and was again raised on the appeal to the Supreme Court of Rhode Island, as clearly appears from the opinion of that Court (Appendix B). Thus, this appeal involves a final order of the highest court of the State of Rhode Island sustaining the constitutionality of a Rhode Island statute against Appellant's contentions that said statute violated Appellant's rights to the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

The Facts

The facts are not disputed. Appellant is in the business of renting and leasing motor vehicles. The Appellant is

required to and does in the course of its business register its motor vehicles with Appellee, who at the time of the action was the Registrar of Motor Vehicles for the State of Rhode Island. The Appellant has applied for and demanded registration of its motor vehicles and has tendered the proper fees therefor under said Chapter 6 other than the "double" fees imposed by § 1(E). Appellee has however refused registration of Appellant's motor vehicles but has demanded the double fees required by the statutory provisions in issue and will continue to refuse registration of Appellant's vehicles except upon said double payment. Accordingly the Appellant has paid the double fees under protest because Appellant could not now or in the future carry on its said business unless it has registered its motor vehicles with Appellee. Further, Appellant would be subject to criminal prosecution if it did not comply with the Statute pertaining to registration of motor vehicles. Further Appellant has demanded refund of the double portion of said registration fees which demand has been refused by Appellee.

The above facts are contained principally in a stipulation entered into by the parties, and accepted by the Court. This stipulation is part of the certified record.

The transcript (which is a part of the certified record) also clearly supports the above facts by uncontradicted testimony.

The Federal Questions Here Presented Are Substantial

A. *Equal Protection of Law is denied Appellant*

The importance of the protection afforded by the so-called "equal protection" clause of the Fourteenth Amendment is obvious. Equal treatment before the law is basic to our conception of law. For persons of like circumstances

to be afforded differing treatment or status or assume different burdens disturbs a fundamental sense of justice.

Appellant submits that upon basic decided principles of law the conclusion is clear that the statute in question exempting the "citizens" of one town from a burden imposed upon all other owners of "vehicles for hire" violates the equal protection of law guaranteed to appellant by the Fourteenth Amendment to the Constitution of the United States.

It has been long evident that a State is proscribed from legislative enactment which arbitrarily favors one class of citizens from others similarly situated. *Morey* v. *Doud*, 354 U. S. 457 (1957); *Liggett Co.* v. *Lee*, 288 U. S. 517 (1933).

As aptly stated by this Court in *Barbier* v. *Connolly*, 113 U. S. 27 at 31 (1885):

> "Equal protection and security should be given to all under like circumstances . . .; that no impediment should be imposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burden should be laid upon one than are laid upon others in the same calling and condition."

The statute in question creates a closed class by singling out those owners of motor vehicles who qualify as "citizens" of the exempted town, and give to those "citizens" an economic advantage which Appellant does not enjoy. This type of statute which creates ". . . a closed class by the singling out . . ." of one company from all others, (or citizens of one town from all other citizens) ". . . with the accompanying economic advantages . . ." deprives those not so favored of equal protection of the laws.

Morey v. *Doud*, supra at P. 465

Of course, "equal protection" does not prevent classification. "But the classification must be reasonable, not arbitrary, and must rest upon some ground of defense having a fair and substantial relation to the object of the legislature, so that all persons similarly circumstanced shall be treated alike."

Royster Guano Co. v. *Virginia*, 253 U. S. 412 (1920).

There are many well-reasoned cases that have set aside legislation attempting to "classify" by exempting particular persons or companies or those living in particular counties or locations. Some of these are as follows:

Liggett Co. v. *Lee*, 288 U. S. 517 (1933) where additional burdens were imposed "consequent upon the mere physical fact that (a new store) lies a few feet over a county line . . ."

Idaho Savings & Loan Association v. *Roden* (Idaho) 350 P.(2d) 225 (1960) where all savings and loan associations were required to insure their accounts except for associations in continuous operation for more than 15 years;

Adams v. *City of Park Ridge*, 293 F(2d) 585 (1961) where an ordinance prohibited solicitation of funds for charitable purposes but attempted to expressly exempt the Community Chest campaign;

Baldwin Construction Co. v. *Essex County Board of Taxation* (N.J.) 108 A(2d) 598 (1954) where the Board attempted to increase taxes "in selected areas confined by arbitrarily fixed geographical boundaries . . .";

Andberg v. *City of Lincoln* (Neb.) 2 NW(2d) 613 (1942) where legislation provided certain pensions for fireman of all cities "except any city of the first

class that has heretofore adopted a charter for its own government;"

City of Ravenna v. *Sistrunk & Co.* (Ky.) 80 S.W. (2d) 578 (1935);

Fronton, Inc. v. *Florida State Racing Commission* (Fla.) 82 So.(2d) 520 (1955) where different requirements for racing permits were based upon express county location, the Court there prohibiting "Classification by counties or otherwise . . ."

Sarner v. *Township of Union* (N.J.) 151 A(2d) 208 (1959) where a statute excluded certain counties by definition from Sunday closing laws. The Court here noted that the statute contained no reason for excluding certain counties and stated at P. 213, 214 in language particularly apt:

> ". . . such classification must have some reasonable and just relation either to the general object of the legislation or to some substantial consideration of public policy or conscience or service to the general welfare. It must not be illusory. Arbitrary selection can never be justified by calling it classification . . . *Care must be exercised that the efficacy of constitutional guaranties shall not be whittled away by indulging in unwarranted presumptions of a factual basis for the legislation.*" (emphasis added)

See also *In Re Regulation* F-22(N.J.) 152 A(2d) 848 (1959).

B. *The Rhode Island Constitution Affords No Protection to Appellant.*

The importance of the Federal guarantee is enhanced by the lack of protection to Appellant under the State Consti-

tution of Rhode Island. Section 2 of Article I of that Constitution provides in part: "And the burdens of the State ought to be fairly distributed among its citizens." But the Rhode Island Supreme Court has stated that all of said Section 2 is advisory and not mandatory, and "was addressed to the general assembly by way of advice and direction, than to the courts by way of enforcing restraint upon the lawmaking power."

In Re Dorrance Street (1856) 4 R.I. 230;
Crafts v. *Roy* (1900) 22 R.I. 179;
Sepe v. *Dancker* (1949) 76 R.I. 160.

C. *The Constitutional Guarantee is Increasingly Important because of the Relative Growth of State Burdens.*

It is respectfully submitted that this Court should properly relate the importance and substantial nature of the Federal question to the growth of State burdens. The need for ever-increasing State revenues and the growth of ever-increasing burdens imposed by the States emphasize the need for this Court to reemphasize in the clearest way that States are and will be required to distribute such burdens fairly among those in similar circumstances.

It has been reported by economists of the National Industrial Conference Board that since 1946 Federal spending has increased approximately 69% while state and local governments during the same period have increased spending about 400%. The following table prepared by said Board illustrates this trend:

	State	*Local*	*Federal*
1946	6.2	7.0	66.5
1954	15.8	17.8	77.7
1962	29.2	33.0	112.2

The above figures are in billions of dollars and the years are fiscal periods ending June 30.

According to the table prepared by the Tax Foundation, Inc., per capita public debt for state and local governments has risen substantially since 1946 while during the same period Federal per capita debt has decreased:

	State	*Local*	*Federal*
1946	$18.	$102.	$2,034.
1954	$61.	$185.	$1,713.
1962	$118.	$325.	$1,630.

This trend of rising financial burdens on state and local governments is expected to continue. Accordingly the prohibitions imposed on state government by the Fourteenth Amendment will be more meaningful and the need therefore more important as the impact of these financial governmental problems relate substantially to the individual.

In this context, Appellant submits the substantial nature of the Federal question is indicated.

D. *The Opinion of the Supreme Court of Rhode Island*

The failure of the Supreme Court of Rhode Island to properly apply the law of the land in the instant case is here separately discussed.

It is interesting to note that Justice Curran of the Superior Court of Rhode Island was so sure that the Statute in issue was unconstitutional, that he refused to give any meaning to the exception in favor of "citizens of New Shoreham." Such refusal was in his opinion required in order to save the statute. (Appendix A)

The Supreme Court of Rhode Island properly refused to accept such interpretation but indulged in other errors in construction and application of the statute.

(1) The Supreme Court of Rhode Island made certain assumptions both of law and fact which are entirely unfounded.

The Court below read the exception as if only those engaging in public transportation within New Shoreham were relieved from the double fee (P. 4 of Appendix B; P. 11 of Appendix B). The Court below made this error by returning to the prior enactment which relieved from the double rate "any citizen of the town of New Shoreham using a motor vehicle within said town for the purpose of transporting persons for hire . . ." (See P. 4 of Appendix B which refers to the first enactment of such exception in the 1931 Public Laws of Rhode Island). But the present exception is not so confined by its explicit language. Of course, the present statute specifically changed the prior enactment. This change is recognized by the Court below as in the nature of an "omission" (P. 5 of Appendix B) and perhaps unintentional. How said Court reached this conclusion is not so clear but perhaps it was guided in so doing by the illogical conclusion that any other reading could make the exception "inapplicable!"

Thus the Supreme Court below made the same type of error as did the Superior Court of Rhode Island. It refused to give meaning to the present form of the statute which is clearly meaningful.

The error thus made is important because it allows the Court below to say on P. 9 of its opinion that the class created by the exception "is given no economic advantage" over the Appellant because the members of the excepted class "could not compete with the others because of the total insularity of the area to which the provisions of the exception have application."

Appellant respectfully submits that this interpretation and the conclusion therein is just not so! Once a "citizen of New Shoreham" has registered at single rates his

"motor vehicle for hire", he is free to operate such vehicle or fleet of vehicles or business anywhere in the State. There is no restriction in law on the right of the "citizen of New Shoreham" to operate. This is the heart of the arbitrary or invidious discrimination which the Court below failed or refused to appreciate in an improper attempt to save the statute. The statute in question just does not confine the vehicle registered at advantageous rates to New Shoreham and no interpretation of said Court will confine said vehicle once so registered to New Shoreham!

Further there is no evidence to support any conclusion of the Court below as to the economic dependence of the town upon "the development of its recreational potential during the summer months." (P. 4 of Appendix B).

More, the Court-asserted exclusion from the exception of "itinerant entrepreneurs" is unfounded; further that such exclusion "would impair the development of this form of public transportation in that town . . ." is a conclusion founded on nothing but conjecture (P. 5 of Appendix B).

Further the economic advantage given to "citizens of New Shoreham" has no conceivable relationship to the Court-assumed purpose of promoting this form of transportation within the town or the development of the town's recreational potential during the summer months.

(2) The Reasons Advanced by the Court below for favoring citizens of New Shoreham is as applicable to other areas in Rhode Island.

In Re Regulation F-22 (N.J.) 152 A(2d) 848 (1959) a New Jersey regulation prohibited wholesale delivery of milk on Sunday in certain marketing areas, but exempted certain other areas. The New Jersey Supreme Court pointed out that "the exemption to be valid, however, would have to be applied equally to all persons similarly

situated. But the very fact of the regulation here reveals that such is not the case." (p. 851-2)

Appellant submits that this is a valid comment. Assuming a legislative purpose of promoting public transportation for cities and towns in insulated geographical position which are asserted to be dependent on development of summer recreational potential, why is New Shoreham arbitrarily selected for favor? An exception should be applied equally to all similarly situated. There is no sound reason to support the exception in one area and not in another. The court below could take judicial notice that New Shoreham is not the only island in Rhode Island.

(3) The Court below relied principally on *McGowan* v. *Maryland*, 366 U. S. 420 and the language on P. 425, and attempted to distinguish *Morey* v. *Doud*, 354 U. S. 457. It is obvious, Appellant submits, that *Morey* v. *Doud* is more in point. Moreover the cases are not contradictory but rest entirely (with respect to the application of the equal protection clause) on their facts. In the *McGowan* case the exemptions were of a nature that could be reasonably related to the substantive legislation but had no such relationship in the *Morey* case.

The instant case may be aptly termed an "all but" case. Burdens are imposed on all "but John Doe," or upon all "but one group." All "but the American Express Company" (as in the *Morey* v. *Doud* case supra); all "but the Community Chest" (as in *Adams* v. *City of Park Ridge*, supra and in *City of Seattle* v. *Rogers (Wash.)* 106 P(2d) 598 (1940)).

Appellant submits that the legislative purpose alleged by the Supreme Court of Rhode Island to be served by the exception is illusory; that the exception constitutes "invidious" discrimination and invalidates the double rates imposed on Appellant.

Conclusion

For the reasons hereinabove set forth Appellant urges this Court to note probable jurisdiction of this Appeal.

Respectfully submitted,

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Appendix A

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PROVIDENCE, SC. SUPERIOR COURT

EQ. No. 29778
P. A. No. 3602

EASTERN LEASING CORPORATION
versus
LAURE B. LUSSIER

EQ. No. 29779
P. A. No. 3603

DUNNE LEASES CARS & TRUCKS, INC.
versus
LAURE B. LUSSIER

EQ. No. 29780
P. A. No. 3604

HURD & GOLDBERG, INC., et al
versus
LAURE B. LUSSIER,

EQ. No. 29781
P. A. No. 3605

IMPERIAL CAR RENTAL CORPORATION
versus
LAURE B. LUSSIER

Papers rec'd from Supreme Court
Jan. 16, 1964 CALVERT E. CASEY
Clerk of Superior Court

EQ. No. 29782
P. A. No. 3606

BROADWAY AUTO SALES, INC., et al
versus
LAURE B. LUSSIER

Providence, Rhode Island, December 12, 1962

Before:
MR. JUSTICE CURRAN

Appearances:
ABRAHAM BELILOVE — *Attorney for Appellant*
JOSEPH L. BREEN — *Attorney for Appellee*

DECISION

CURRAN, J. The feeling in this case is predicated upon the view that Title 31, Chapter 6, Section 1 (E) is illegal, void, and unconstitutional in so far as the provisions thereof violate and are contrary to the Constitution of the United States as alleged herein.

The statute in question attempts to give to the citizens of New Shoreham certain rights which no other citizens of the State of Rhode Island are entitled. In other words, registration fees for automobiles devoted to certain uses are imposed upon all Rhode Islanders and anyone else except those who are referred to as citizens of New Shoreham.

It is argued that because certain exemptions are given to New Shorehamites and not to others that the Constitution of the United States requiring equal application of the laws is violated by exemption of New Shorehamites from the provisions of the statute requiring them in case they enter certain businesses to pay certain fees.

In order to reach the conclusion that the statute in question is unconstitutional the complaint requests that

it be so construed as to make it applicable to residents or inhabitants of New Shoreham rather that to citizens of New Shoreham as it is expressed in the statute. Should that construction be adopted it is argued that certain exemption privileges are granted to citizens of New Shoreham, residents of New Shoreham, inhabitants of New Shoreham that are not granted to others, and, that, therefore, the equal protection of the laws is denied to those who must pay the fee.

The rule of construction of statutes with a view to their constitutionality is that they are presumed to be constitutional, and that if there is a choice of construction, one of which will make the statute unconstitutional and one will make it unconstitutional, the construction which makes the statute constitutional is to be adopted if it is reasonable within the terms of the statute. For that rule to be adopted here the construction of the expression in the statute "citizens of New Shoreham" would be made to read "residents of New Shoreham" or "inhabitants of New Shoreham" with the result that, in my opinion, it would make the statute completely unconstitutional because it would apply, or in such a manner as to give the residents, inhabitants, or so-called citizens of New Shoreham a privilege that it not extended to others in the State of Rhode Island.

Now, this is done by reason of the use of the words "citizens of New Shoreham". We know, of course, there are no citizens at present, citizens of New Shoreham. If it is held that those words are meaningless in the statute, the provision of the statute saying that if any of its terms are held to be unconstitutional, it is the intent of the legislature that they should be separated from the constitution or the remainder and that the remainder—if it should—will be apples as a constitutional statute.

The word citizens, or citizen in the singular, is a very old one in the English language. In England it meant one who was entitled to sufferance, that is, the right to vote and who lived in a city; and that is where the name citizen came from. Opposed to or in connection with that is the designation of residents. A person who lived in a burg was called a burgher, and that is how the name came to be so common in our state.

Burg is not common. It is not a city. It is simply a place where a cluster of houses exist. A number of people are in that cluster, and whether that happens to be in one or more towns makes very little difference. It is regarded as a burg and is a political unit from which to send members to Parliament. So you have on the one hand citizens, and you have on the other hand burghers.

Now, to apply the term citizens to this statute but to construe it to mean residents or inhabitants would be to misapply the word altogether. The word is clearly misapplied in the statute. There are no citizens of New Shoreham. There are, of course, residents of New Shoreham, but to hold the word citizen as used in that statute to mean residents or to mean inhabitants for the resulting in holding the remainder of the statute unconstitutional would seem to me to be a violation of the ordinary construction.

I, therefore, hold that the expression in the statute "citizens of New Shoreham" refers to a non-existent class of people, and that no one can claim a right under that statute as a citizen of New Shoreham to the disadvantage of the petitioner or complainant. Construing the statute in this manner, it leaves that statute without the words "citizens of New Shoreham" and makes it applicable generally as the legislature itself decreed that it should be throughout the state.

I think the prayers of the petitioner are to be denied, and the petition should be dismissed. Your exception, Mr. Belilove, to the rule is noted.

(Exception of Appellant Noted.)

Jan. 28, 1963
Allowed:
Cuevas, J. (S)

Certification

I hereby certify that the foregoing Pages 1 through 4, inclusive, is a true and accurate transcript of a decision according to me stenographic noted.

Joyce A. Jarvis (S)
Court Reporter
Superior Court

Appendix B

SUPREME COURT

Equity No. 3060.

IMPERIAL CAR RENTAL CORP.

v.

LAURE B. LUSSIER, Registrar.

Equity No. 3062.

BROADWAY AUTO SALES, INC., et al.

v.

LAURE B. LUSSIER, Registrar.

Equity No. 3064.

DUNNE LEASES CARS AND TRUCKS, INC.

v.

LAURE B. LUSSIER, Registrar.

Equity No. 3066.

EASTERN LEASING CORPORATION

v.

LAURE B. LUSSIER, Registrar.

Equity No. 3068.

HURD & GOLDBERG, INC., et al.

v.

LAURE B. LUSSIER, Registrar.

OPINION

ROBERTS, J. These are five petitions, in each of which an appeal is taken from an order of the registrar of motor vehicles requiring that each petitioner pay fees for the registration of certain motor vehicles owned by it and used for hire in compliance with the provisions of G. L. 1956, § 31-6-1 (E). These petitions were brought

in the superior court pursuant to the provisions of G. L. 1956, § 31-2-19, wherein it is provided specifically that they follow the course of equity. After a hearing thereon a justice of the superior court denied and dismissed each petition, and from that order each petitioner has appealed to this court.

In prior litigation these petitioners contested a ruling of the registrar that the motor vehicles under consideration were motor vehicles for hire within the purview of said § 31-6-1 (E), and in *Broadway Auto Sales, Inc.* v. *Asselin*, R. I., 176 A.2d 714, this court held that such vehicles were motor vehicles for hire within the purview of that statute. In the instant litigation they challenge the constitutionality of the statute for the reason that it provides that the registration fees of motor vehicles for hire shall be charged at double the rate of fees charged for such vehicles when not used for hire but by way of an exception contained therein relieves the citizens of the town of New Shoreham from the payment of such double registration fees. Section 31-6-1 (E) reads as follows: "For the registration of every motor vehicle for hire, double the above rates. Except that any citizen of the town of New Shoreham shall not be required to pay the double rate specifically provided for in this section; provided, however, that the motor vehicle so used by such citizen of New Shoreham shall be properly registered in accordance with chapters 3 to 9, inclusive, of this title."

The decision of the trial justice discloses that he denied and dismissed these petitions on the basis of his conclusion that the statute provides for no exception to its requirement that vehicles for hire pay the double registration fee provided for in the act and that, therefore, it makes no classification that could by reason of discrimination be found to violate the equal protection clause of the fourteenth amendment. In doing this he took the view that the

word "citizens" could not be equated with the words "residents" or "inhabitants" without doing violence to the rules of statutory construction. The petitioners contend that the trial justice erred in construing the word "citizen" as not including an "inhabitant" or "resident" of the town of New Shoreham. With this contention we agree, conceding that while ordinarily words used in statutory enactments are to be given their customary meaning, when it appears from the context in which such words are used that the legislature intended a different meaning than that ordinarily given such words, the court must comply with that legislative intent. *Tillinghast* v. *Reed*, 70 R. I. 259, 262.

The trial justice in the instant case reads the word "citizen" in its technical or political connotation and by so doing, in our opinion, thwarts the legislative intent to provide for an exception in favor of persons operating cars for hire in the town of New Shoreham. The Legislature may employ technical language in circumstances that clearly indicate an intention to use them in other than the technical sense. As was aptly stated in *Kuehne* v. *Town Council*, 136 Conn. 452, 456, "The reason and purpose of the legislation as shown by its provisions may well be more significant than technical definitions in determining the meaning of the particular words employed.' "

It is our opinion that the legislature in enacting the instant statute did not intend that the word "citizen" be given its political connotation. Rather, the term was used to circumscribe the class of persons eligible for the benefit contemplated in the exception. The statutory provision excepting any citizen of New Shoreham from the requirement of paying double the registration fee appears to have been enacted first as an addition to G. L. 1923, chap. 98, in P. L. 1931, chap. 1715. As it was then enacted it read in pertinent part: "Any citizen of the town of New

Shoreham using a motor vehicle within said town for the purpose of transporting persons for hire shall not be required to pay the double rate * * *." The statute was clearly designed to encourage the development of public transportation in the town of New Shoreham, popularly known as Block Island, by relieving those engaging therein from the double fee, and we are strengthened in this conclusion by a recognition of the insularity of the town and of its economic dependence in substantial measure upon the development of its recreational potential during the summer months.

When we read the statute in the light of this purpose, we are persuaded that the term "citizen" was intended to limit the class of persons to whom the statute would have application, that is, to those inhabitants of the town who demonstrated the permanence of their residency in that town by customarily exercising the privileges of citizenship therein. Such a test obviously would have the effect of excluding from the purview of the exception itinerant entrepreneurs who would impair the development of this form of public transportation in that town by engaging therein only during the summer months. In short, we are of the opinion that the exception was intended to encourage the development of public transportation in the isolated township by those of its inhabitants who resided there permanently and that the use of the term "citizen" contemplated only a test upon which such eligibility could be determined.

When this provision was enacted as part of the motor vehicle code, so called, P. L. 1950, chap. 2595, omitted therefrom was the phrase "using a motor vehicle within said town for the purpose of transporting persons for hire." It must be conceded that this omission tended to obscure the legislative intent to relieve any resident of the town of New Shoreham operating a motor vehicle

for hire therein from the requirement of paying the double fee. However, an obscuration of legislative intent does not necessarily operate to alter or abandon the intent unless that result was clearly intended. We are unable to perceive that in re-enacting the exception in its present form the legislature intended to repeal the exception affording those operating such vehicles in the town of New Shoreham the pertinent relief by the devious process of making it inapplicable to anyone. We will not impute to the legislature an intention to thus indulge in absurdity. *Radick* v. *Zoning Board of Review*, 84 R. I. 472.

Agreeing with petitioners' contention that the statute does except the inhabitants of the town of New Shoreham who use motor vehicles within that town for hire from compliance with its requirement that the registrants of motor vehicles used for hire pay a double registration, we turn to a consideration of their further contention that the exception is so discriminatory in nature as to deprive them of the equal protection of the laws guaranteed in the fourteenth amendment to the constitution of the United States. The petitioners concede that state legislatures may in their enactments indulge in classifications that in some measure discriminate without violating the inhibition of the equal protection clause but argue that in the instant statutory enactment the exception is without basis in reason and discriminates arbitrarily against them.

The extent to which the equal protection clause inhibits arbitrary discrimination in legislative enactments has been discussed frequently by the Supreme Court, most recently perhaps in *McGowan* v. *Maryland*, 366 U. S. 420, wherein that court said at page 425: "The standards under which this proposition is to be evaluated have been set forth many times by this Court. Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the States a wide scope of

discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." The petitioners have the burden then to establish clearly the exception here under challenge is unreasonable and arbitrarily discriminatory. "It is a salutary principle of judicial decision, long emphasized and followed by this Court, that the burden of establishing the unconstitutionality of a statute rests on him who assails it, and that courts may not declare a legislative discrimination invalid unless, viewed in the light of facts made known or generally assumed, it is of such a character as to preclude the assumption that the classification rests upon some rational basis within the knowledge and experience of the legislators." *Metropolitan Casualty Ins. Co.* v. *Brownell*, 294 U. S. 580, 584.

Confronted with this burden petitioners argue, first, that the provision of the statute requiring payment of double registration fees for vehicles used for hire imposes a tax for the production of revenue and that an exemption of the people of a particular town therefrom is arbitrary per se. Whether the motor vehicle registration fees are taxes or regulatory fees is a question this court has not yet been required to decide. That such fees, if viewed as a tax, would be use taxes and not property taxes seems clear. See *Ingels* v. *Boteler*, 100 F.2d 915, 919. The petitioners' contention, in our opinion, misconceives the purpose of the statute, which is to impose a double fee upon those vehicles which are intended to be used in the conduct of a private business for profit upon the public highways by furnishing

the public with transportation. Such activities have a direct effect upon the overriding public interest in the maintenance of adequate facilities for public transportation, and it does not appear from anything contained in the instant record that the imposition of the double fee and the exception therefrom of the citizens of New Shoreham has any purpose other than to promote that overriding public interest.

We make this point because, in our opinion, the circumstances are such that this court would not be justified in applying tests relevant to the requirement for equal protection in some indirect or strained manner. In our opinion situations of this kind were not within the contemplation of the court when in *Morey* v. *Doud*, 354 U. S. 457, it said at page 464: "'Discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision.'" In other words, we do not perceive that the subject matter of this enactment and the exception therein made in any manner preclude testing it for consistency with the constitutional requirement for equal protection by applying thereto the principles laid down in *McGowan* v. *Maryland*, *supra*.

The petitioners contend also that the statute discriminates arbitrarily against them in that the exception has the effect of creating a "closed class" of the type that was condemned in *Morey* v. *Doud*, *supra*. This is to argue, as we understand it, that legislative classification which results in the creation of a "closed class," if not violative of the equal protection clause ipso facto, is at least prima facie void as violative thereof. This argument, in the first place, appears to verge on the undesirable practice of adjudication by epithet, but, more important, it obscures the true test, that legislation resulting in the creation of the "closed class," so called, violates the equal protection

clause of the constitution only when, like any other classification, it is palpably arbitrary or bears no reasonable relationship to the purpose of the legislation in which it is contained.

In *Morey* v. *Doud*, *supra*, the legislature provided for the supervision, licensing, and bonding of community currency exchanges in order to protect the public against the evils that could result from the unregulated and uncontrolled operation of such businesses. The American Express Company was specifically excepted from the requirements of the act. The majority of the court noted that the exception created a "closed class" and conferred an economic advantage upon that class as against others in the same business, and, that the purpose of the act was to provide the public with continuing protection, a purpose to which the discrimination in favor of the American Express Company did not conform. The majority on these grounds held the statute, by reason of the exception contained therein, violated the equal protection clause.

The view thus taken by the majority in that case was subject to vigorous dissent. Mr. Justice Frankfurter, joined by Mr. Justice Harlan, stated in dissent their view that classification is inherent in the legislative process and is not inhibited by the equal protection clause where it is reasonably designed to correct the evil contemplated by the legislature in its enactment. In a separate dissent Mr. Justice Black stated his objection "to the use of general provisions of the Constitution to restrict narrowly state power over state domestic economic affairs," *Morey* v. *Doud*, *supra*, at page 471, and went on to disclose his view that where the discrimination affected civil rights, a much more rigorous application of the equal protection clause should be made.

While the instant legislation may superficially resemble the legislation passed upon in *Morey* v. *Doud*, it is our

opinion that it cannot be reasonably viewed as having the effect that was held by the majority of the court in that case to invalidate the legislation. First, if the instant legislation results in a "closed class," the class so created is given no economic advantage over others who engage in the operation of motor vehicles for hire, it being clear that the members of the class resulting from the exception could not compete with the others because of the total insularity of the area to which the provisions of the exception have application. Second, the purpose of the instant legislation is to provide for the regulation of the business of transporting persons for hire by motor vehicle to the end that the development of adequate public transportation through such means may be encouraged and developed and promoted. Clearly, the exemption of the inhabitants of the town of New Shoreham who so engage in this business will encourage and promote the development of that type of public transportation in the town so that the discrimination in favor of the inhabitants of that town bears a reasonable relationship to the purpose of the legislation.

In our opinion it is significant that the instant statute would operate adversely only upon persons not residents of the town of New Shoreham who sought to engage in the business of transporting the public for hire in motor vehicles within that town. In such a circumstance it is clear that the differential in the registration fees required to be paid would constitute discrimination. However, the arbitrary character of this discrimination, if any, would be more apparent than real, there being no ground for a reasonable inference that nonresidents of that town would engage in such business therein other than during the summer months. To permit nonresidents to carry on this business on a temporary basis through the equalization of the registration fees could only serve to defeat the development of adequate public transportation of this kind

within that town by encouraging ruinous competition. In brief, the discrimination which could result from an application of the exception with respect to the latter class of persons would not, in our opinion, be violative of the equal protection clause. "That a statute may discriminate in favor of a certain class does not render it arbitrary if the discrimination is founded upon a reasonable distinction, or difference in state policy." *Allied Stores of Ohio, Inc.* v. *Bowers*, 358 U.S. 522, 528. We are of the opinion that the instant statute discriminates only upon the basis of a reasonable distinction and relates to the purpose for which the legislation was enacted and therefore is not void by reason of repugnance to the equal protection clause. Because we take this view, it will not be necessary to consider the further contentions of the petitioners.

The petitioners' appeals are denied and dismissed, the orders appealed from are affirmed, and each cause is remanded to the superior court for further proceedings.

Appendix C

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
Providence, Sc. Superior Court
P. A. No. 3603

DUNNE LEASES CARS AND TRUCKS, INC.

v.

LAURE B. LUSSIER, in his capacity as
Registrar of Motor Vehicles

ORDER

The appeal from the order of the registrar of motor vehicles in the above-captioned matter is denied and dismissed.

PER:

ENTER:
LOUIS A PACKARD
Deputy Clerk

(s) CURRAN, J.
Dec 26, 1962

Appendix D

Docket Entry in Superior Court:

"1964 January 16 Opinion filed in Supreme Court Order appealed from is affirmed."

Appendix E

Title 31, Chapter 6, Section 1(E) of the General Laws of Rhode Island reads as follows:

"(E) For the registration of every motor vehicle for hire, double the above rates. Except that any citizen of the town of New Shoreham shall not be required to pay the double rate specifically provided for in this section; provided, however, that the motor vehicle so used by such citizen of New Shoreham shall be properly registered in accordance with Chapters 3 to 9, inclusive, of this title."